



TOWN OF TEWKSBURY ZONING BOARD OF APPEALS

999 Whipple Road
Tewksbury, MA 01876

Robert Dugan, Chairman
Marc DiFruscia, Clerk
Leonard Dunn
Associate Members:
Gerald Kutcher
Jaime Doherty

DEPARTMENT OF COMMUNITY DEVELOPMENT

MEETING MINUTES November 21, 2013

The meeting was called to order at 6:30 p.m. by Robert Dugan, Chairman, at the Tewksbury Town Hall Auditorium. Present at the meeting were Len Dunn, Gerald Kutcher, and Jaime Doherty. Also in attendance was Melissa Johnson, Recording Secretary. Marc DiFruscia was not present.

Approval of Minutes – October 24, 2013

MOTION: Mr. Dunn made the motion to approve the October 24, 2013 meeting minutes as presented; seconded by Mr. Kutcher and the motion carried 4-0.

Mr. Dugan welcomed Mr. Kutcher and Ms. Doherty as new members on the Board.

NEW HEARING

Kenneth and Marion Carew as a party aggrieved for a review of a decision made by the Building Inspector and/or other authorities in a letter dated October 9, 2013 as filed with this Board. Said property is located at **24 Juniper Lane, Unit 24**, Assessor's Map 63, Lot 50, zoned Residential.

Present was Kenneth and Marion Carew of 24 Juniper Lane, Attorney Charles Zaroulis, and Edward Johnson, Building Commissioner. Mr. Johnson disclosed that the recording secretary is his daughter.

Mr. Dugan requested Attorney Zaroulis provide a background on this matter. Attorney Zaroulis explained that this development is by a special permit that was issued by the Planning Board in 1992. Section K of the conditions of the special permit states that any change in the number of buildings, dwellings units per acre, rooms per unit as shown on the approved plan, bedrooms per unit and/or acre... and/or any other significant changes may require a new special permit to be issued. Attorney Zaroulis explained that the applicants filed for a building permit with the building commissioner and, based on the Zoning Bylaws, State building Code, and Planning Board Special Permit, the building commissioner denied the request for a building permit. The appellants then had the opportunity to file an appeal and that was never done and they went ahead and constructed the addition without a building permit. As a result, back in November, 2012, the building commissioner issued a first notice of violation and issued orders concerning

the matter. The appellants received the notification and never took the right of appeal. A year went by and the building commissioner issued the same notification that there is a zoning violation and issued orders to take steps to correct the matter. Attorney Zaroulis explained that because there was a failure to file a building permit there is also a violation of the State Building Code. The building commissioner gave notification of the right to appeal to the State Building Code and this has not been done. In addition, the application before the Board has not been fully completed. Attorney Zaroulis explained that there is a three season room that has been attached to this dwelling without the benefit of a building permit and was constructed without a modification of the Special Permit by the Planning Board to allow for the room to be constructed. Attorney Zaroulis noted that the condominium association documentation also prohibits three season rooms.

Mr. Carew explained that he has a letter from DiPalma Estates Homeowners Association dated November 13, 2013 stating that his request to build an 8x20 screen room on the existing patio slab has been approved by the Board of Trustees. The approval is contingent upon the guidelines in the condominium documents as well as approval from the Town of Tewksbury. Mr. Carew explained that every year at this time he would have to put a tarp on the porch. As a result, Mr. Carew contacted a builder to inquire about putting a roof on the room. The builder informed him that a building permit was not needed. Mr. Carew provided the Board with pictures showing their three season room as well as some of the other homes in the development that have three season rooms.

Mr. Carew explained that he was not going to file an appeal, but when he asked the Building Commissioner how he knew about the room, he informed him that there were a number of complaints. Mr. Carew requested a copy of the complaints and was told that there was one letter as well as a telephone call and both were anonymous. Mr. Carew explained that he was a State Trooper for 25 years and if a call was received where the person did not identify themselves, it was thrown away. Mr. Carew explained that they have spent a lot of time and money on filing this appeal and had to notify over 300 abutters.

Mr. Dugan asked if the permanent roof is part of the construction and Mr. Carew confirmed this and explained that prior to that it was a canvas roof.

Attorney Zaroulis noted that the application states that the Carew's reside at 3 Clement Place, Merrimac, MA and this evening they stated they reside at 24 Juniper Lane. Attorney Zaroulis requested clarification on this. Mr. Carew explained that they reside at 3 Clement Place, Merrimac, MA with their daughter and are currently renting 24 Juniper Lane to a tenant. Mr. Dunn asked how long they have resided at 3 Clement Place and Mrs. Carew explained approximately 5 years.

Attorney Zaroulis explained that it is the policy of the Town to take any complaint filed seriously; whether anonymous or not, they are considered valid complaints. Mr. Dugan explained that the Board is not concerned with whether the complaints were anonymous or not.

Attorney Zaroulis noted that the letter from the Board of Trustees is signed by James Goyette; who is also the builder who constructed the addition and there are also no minutes concerning any votes of the Board of Directors.

Mr. Dugan requested a copy of the original Special Permit and Mr. Johnson provided this to him.

Mr. Carew noted that they were not aware of any right of appeal. Attorney Zaroulis noted that the letter states in bold writing that there is a right to appeal. Mrs. Carew explained that they never received the original letter until they received the certified copy.

Mr. Dugan explained that the property is governed by the special permit dated October 2, 1992, read Section K of the special permit aloud and noted that building a roof is considered a significant change.

Mr. Carew asked how it is possible that other people have been allowed to construct three season rooms in this development and they are not allowed. Mr. Dugan explained that this will be addressed when the hearing is opened to the public as he is not sure if permits were obtained for the other structures as well.

Mr. Carew noted that the Board of Directors is not opposed to the room. Mr. Dugan explained that approval from the Town is also required. Attorney Zaroulis noted that the Board of Directors voted unanimously to disallow future permanent three season rooms. Attorney Zaroulis explained that the Carew's have the right to file with the Planning Board for a modification of the special permit.

A member of the audience, who was later identified as James Goyette, provided the Board with a document entitled "Certificate of Vote in Resolution of the Board of Trustees of the L. John DiPalma Estates Homeowner's Trust" dated June 26, 2007. This document has been added into the record. Attorney Zaroulis reviewed the document and explained that it appears that a resolution was taken that the condominium association is allowing, through a procedure with them, the construction of a four season room; however, this still does not address the issue of the special permit that was issued; the only way to address the special permit is to go before the Planning Board for a modification.

Mr. Dugan opened the hearing to the public.

Eileen Pasquerella of 92 Juniper came forward and stated that she has a three/four season porch on her home that was allowed by the town, but by only one builder, Champion Builders; as required by the association. Ms. Pasquerella explained that she went through the required process with the town and received a building permit. The room was constructed in 2007.

Michelle Matranga of 89 Juniper Lane came forward and noted that she is one of the Trustees on the Board of Directors. Ms. Matranga requested a copy of the document that was provided as the Board never approved such a document. Ms. Matranga noted that she can provide a copy of the minutes if need, but they state that they would like to build a permanent roof on the existing screen house, and a permanent roof on a permanent structure was built; the screen house was taken down. Ms. Matranga explained Mr. Goyette informed the Carew's that they did not need a building permit despite the fact the building commissioner told him a modification of the special

permit was needed. Ms. Matranga noted that the minutes also state that if the town approves the roof, the board would approve the roof; not the structure.

James Goyette came forward and noted that he constructed the screen room. Mr. Goyette explained that it is not a three season room; it is a screen room with a hard roof that is supported by 4x4 posts. Mr. Goyette explained that the Board of Directors approved the roof at 24 Juniper and asked how Ms. Pasquerella has a room if they are not allowed unless the special permit is modified. Mr. Dugan explained that the matter at hand is 24 Juniper not any other homes located within the development. Mr. Goyette noted that he feels that all of the other homes should also be addressed and not just this one.

Ms. Margaret Ardito of 71 Juniper Lane came forward and asked if this matter is before the Board because someone complained or because the Carew's did not follow the proper procedures. Mr. Dugan explained that a complaint was received and it was determined that the proper procedure was not followed. Attorney Zaroulis noted that this is irrelevant to the matter at hand. Mr. Dugan explained that the proper procedure would be to go before the Planning Board to modify the special permit.

Ms. Margaret Leone of 78 Juniper Lane came forward and explained that she is present to support the Carew's as she feels they were misinformed throughout the process. Ms. Leone asked what the definition is between a three season porch and a screen room. Attorney Zaroulis explained it is irrelevant whether there are screens or not, this is a roof with a structure. Mr. Dugan suggested Ms. Leone contact the building department to review the legal definitions.

Ms. Diane Asselin of 68 Juniper Lane came forward and noted that she is also present to support the Carew's.

Mr. Dunn asked when the last time the town was out to Juniper Lane and when the complaints were received. Attorney Zaroulis explained that a complaint was received in 2012 and a violation was issued. Another complaint was received in 2013 and another violation was issued.

Mr. Dugan suggested the appellants file with the Planning Board to modify the special permit and then apply for a building permit; should the Board decide to uphold the building commissioner's decision.

MOTION: Mr. Dunn made the motion to close both parts of the hearing; seconded by Mr. Kutcher and the motion carried 3-0.

MOTION: Mr. Dunn made the motion to uphold the decision of the building commissioner in regard of the appeal of Kenneth and Marion Carew as a party aggrieved for a review of a decision made by the Building Inspector and/or other authorities in a letter dated October 9, 2013 as filed with this Board. Said property is located at 24 Juniper Lane, Unit 24, Assessor's Map 63, Lot 50, zoned Residential; seconded by Mr. Kutcher and the motion carried 3-0.

DUGAN, DUNN, KUTCHER

Old Business

There was no old business.

New Business

There was no new business.

Adjournment

MOTION: Mr. Dunn made the motion to adjourn; seconded by Mr. Kutcher and the motion carried 4-0.

Approved: 1/30/14

List of documents for 11/21/13 Agenda
Documents can be located at the Community Development Office

Approval of Minutes – October 24, 2013

NEW HEARING

6:30 P.M. Kenneth and Marion Carew as a party aggrieved for review of a decision made by the Building Inspector and/or other authorities in a letter dated October 9, 2013 as filed with this Board. Said property is located at **24 Juniper Lane, Unit 24** Assessor's Map 63, Lot 50, zoned Residential.

- *Application packet dated 10/25/13.*
- *Copy of Planning Board variance dated October 7, 1992.*
- *Letter to Ken Carew, 11/13/12 from Jim Goyette, DiPalma Estates HOA Board of Trustees*

Copy of ZBA 2014 Calendar